

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| THOMAS R. MILLER, | § |
| | § No. 190, 2010 |
| Defendant Below- | § |
| Appellant, | § |
| | § Court Below—Superior Court |
| v. | § of the State of Delaware |
| | § in and for Sussex County |
| STATE OF DELAWARE, | § Cr. ID No. 92S05488DI |
| | § |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: June 1, 2010
Decided: June 25, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 25th day of June 2010, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Thomas R. Miller (“Miller”), filed an appeal from the Superior Court’s March 31, 2010 order denying his fourth motion for postconviction relief. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground

that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record reflects that in 1992 Miller was charged by information with Unlawful Sexual Intercourse in the First and Second Degree, Unlawful Sexual Penetration in the Second Degree, Burglary in the First Degree, and Criminal Trespassing in the First Degree. The charges stemmed from an attack on an eighty-five year old woman who resided at a senior citizen apartment complex in Lewes, Delaware. Volunteers attempting to deliver a Thanksgiving dinner to the victim discovered Miller in her apartment and called police. The police found Miller, unclothed, on top of the victim. Miller entered a Robinson plea and was sentenced to twenty years of Level V incarceration.

(3) Miller filed a motion to withdraw his plea on the ground that his attorney had failed to provide him with a copy of an FBI forensic report, which stated that DNA testing had yielded inconclusive results. Miller's motion was granted, he was granted new counsel, and the case proceeded to trial. The victim had died in the interim. At trial, the jury found Miller guilty of Burglary in the First Degree and Unlawful Sexual Intercourse in the First Degree. He was sentenced to a life term plus eight years. This

¹ Supr. Ct. R. 25(a).

Court affirmed Miller's convictions on direct appeal.² Since that time, Miller has filed several postconviction motions, a petition for a writ of mandamus, at least two petitions for a writ of habeas corpus, and several motions for sentence modification, all of which have been grounded in his claim that the FBI report demonstrates that no rape was committed. All of Miller's attempts at postconviction relief have been unsuccessful.

(4) Miller's latest postconviction motion is based on a letter from the Office of the Public Defender dated May 12, 2009. The letter sets out the requirements under Del. Code Ann. tit. 11, §4504 for proving actual innocence through DNA testing. In addition, the letter states that his case does not fall within the statute because the identity of the perpetrator was never in question. Miller, nevertheless, argues that the letter demonstrates that his conviction should be vacated and he should be released from custody.

(5) There is no dispute that Miller's motion is time-barred³ and procedurally barred as formerly adjudicated.⁴ Moreover, Miller's claim of a violation of his rights that overcomes the procedural bars is without merit.⁵

² *Miller v. State*, Del. Supr., No. 236, 1994, Hartnett, J. (May 9, 1995).

³ Super. Ct. Crim. R. 61(i)(1).

⁴ Super. Ct. Crim. R. 61(i)(4).

⁵ Super. Ct. Crim. R. 61(i)(5).

As such, we conclude that the Superior Court correctly denied Miller's motion.

(6) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice